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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,875	04/13/2001	Harold Norbert Heller	29565/KC15,490	5544
22827	7590	04/05/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			KIDWELL, MICHELE M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,875

Applicant(s)

HELLER ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-47 and 49-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-47 and 49-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 41 – 47 and 49 – 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Takamitsu et al. (CA 2,096,672)

With reference to claim 41, Takamitsu et al. (hereinafter "Takamitsu") discloses a personal care absorbent article comprising a front portion including opposing first and second lateral side portions defining respective first and second lateral side edges (figure 1), and a central section defining a fastening area between the first and second lateral side portion (16), first and second fault lines (9b) being disposed between the fastening area and the respective first and second lateral side portions (figure 1), a rear portion including an outer rear edge (figure 2), the first and second fault lines being configured for activation to selectively release the front portion from the rear portion for use of the personal care absorbent article as a diaper-like article (page 3A); a crotch portion extending between the front portion and the rear portion (figure 6); first and second fasteners releasably secured to the fastening area (page 8, line 24 to page 9,

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line 7) and non-releasably secured to the front portion spaced apart from the first and second lateral side edges of the front portion (figures 3 – 4), the first and second fasteners being adjustable in the fastening area without activation of the first and second fault lines as set forth on page 9, line 17 to page 10, line 2.

As to claim 42, Takamitsu discloses a personal care article wherein the fault lines are cut lines having no front portion material extending across the fault lines as set forth in figure 5.

With reference to claims 43 and 50 – 52, Takamitsu discloses the fault lines as lines of perforations, which may be considered as an array of apertures, material crushed in a line pattern or material that is breakably attached, as set forth on page 5, line 20.

With respect to claim 44, Takamitsu discloses the fasteners comprising hook-type fasteners engageable with loop material at the fastening area as set forth on pages 8, line 24 to page 9, line 7.

Regarding claim 45, Takamitsu discloses the first and second fasteners providing at least partial support of integrity of the front portion across the fault lines as set forth in figure 1.

With reference to claim 46, Takamitsu discloses a fastening area that comprises a separate and distinct patch of fastening material affixed to an underlying web as set forth on page 9, lines 13 – 16.

As to claim 47, Takamitsu discloses a fastening area that is integral with a front surface of the central section of the front portion as set forth in figure 4.

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As to claim 49, Takamitsu discloses a personal care article wherein a floating portion of each fastener is disposed, from the respective fault line, inwardly toward a central portion of the front portion, and being unattached to the front portion inwardly of the respective fault line as set forth in figure 5.

With reference to claim 53, Takamitsu discloses a personal care article wherein the first and second fasteners are spaced apart from a waist opening and respective leg openings as set forth in figure 6.

Response to Arguments

Applicant's arguments filed January 14, 2005 have been fully considered but they are not persuasive.

Initially, the examiner notes that contrary to applicant's assertion on page 4, line 4 of the Remarks filed January 14, 2005 that claims 41 – 47 and 49 – 52 are pending, claims 41 – 47 and 49 – 53 are pending due to the added new claim 53 filed with the amendment dated January 14, 2005.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., flaps secured apart from side portions and the amount of layers to which the flaps are bonded) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Claim 41 has actually been amended to recite that the side flaps are non-releasably secured to the front portion spaced apart from first and second lateral side edges, not portions.

The applicant also provides arguments with respect to the flaps being bonded to three layers which may create a bulky, uneven and less comfortable wear. These features, or lack thereof, are not recited in the rejected claims and therefore do not provide a patentable distinction between the claimed invention and the prior art rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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